

HOUSE BILL REPORT

HB 3046

As Reported by House Committee On:
Economic Development, Agriculture & Trade

Title: An act relating to establishing the Washington beer commission.

Brief Description: Establishing the Washington beer commission.

Sponsors: Representatives P. Sullivan, Newhouse, Grant, Kristiansen, Quall, Armstrong, Blake, Haler, Wallace, Skinner, Clibborn, Chandler, Condotta, Kessler, Morrell, Simpson, Conway, Kirby, Sells, Rodne, Kilmer and Linville.

Brief History:

Committee Activity:

Economic Development, Agriculture & Trade: 1/31/06 [DPS].

Brief Summary of Substitute Bill

- Establishes the Washington Beer Commission (Commission), subject to referendum approval by affected producers, and prescribes its membership, responsibilities, authorities and obligations.
- Authorizes the Commission, with Department of Agriculture oversight, to speak on behalf of state government regarding the marketing and promotion of Washington-produced beer.
- Levies an annual assessment on affected producers to fund Commission programs and activities.
- Requires Department of Agriculture approval of the Commission's proposed budget and its advertising, promotional, educational, and marketing programs.

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE & TRADE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Linville, Chair; Pettigrew, Vice Chair; Kristiansen, Ranking Minority Member; Appleton, Bailey, Blake, Buri, Chase, Clibborn, Dunn, Grant, Haler, Holmquist, Kilmer, Kretz, McCoy, Morrell, Newhouse, Quall, Strow, P. Sullivan and Wallace.

Staff: Meg Van Schoorl (786-7105).

Background:

Agricultural commodity commissions and boards may be established in Washington law either under individual chapters or as part of enabling acts covering multiple commodities. Commodity commissions perform a variety of functions, including advertising, sales promotion, research, and education, related to a particular commodity.

Currently, 24 commodity commissions are established under Washington law. Six were created under their own individual chapters: apple; dairy products; fruit; beef; tree fruit research; and wine. Six were created under the 1955 Commodity Commission Enabling Act and have their own chapters under the Washington Administrative Code (WAC): potato; seed potato; bulb; wheat; fryer; and barley. The remaining 12 were created under the 1961 Commodity Commission Enabling Act and have their own chapters under the WAC: hop; dry pea and lentil; mint; blueberry; alfalfa seed; red raspberry; cranberry; strawberry; asparagus; Puget Sound salmon; canola and rapeseed; and turfgrass seed.

Depending upon industry priorities, some commissions perform primarily marketing programs; some perform only research programs; some commissions perform both. The majority of the commissions' funding derives from mandatory producer assessments. Their annual budgets range from \$12,000 to \$6.1 million.

In recent years, there have been numerous court challenges nationwide objecting to commodity commissions' use of mandatory assessments for advertising and market promotion programs. The lawsuits have centered on allegations that such programs infringe upon First Amendment rights to free speech by mandating that producers pay assessments to fund generic advertising with which they may disagree.

In 2003, a court challenge brought against the Washington Apple Commission resulted in legislation to restructure commodity commission statutes in terms of governance, speech, and oversight of commission activities, budget and programs.

Summary of Substitute Bill:

Public Interest

The production and proper promotion of Washington beer is in the public interest and is vital to the state's economic well-being because it provides jobs, tax revenues and other benefits to the state and local communities. This chapter is only one part of a comprehensive scheme to regulate production and marketing of Washington beer. This chapter is enacted in the exercise of the police powers of the state to protect the health, peace, safety and general welfare of its citizens.

Speaking on Behalf of the Washington State Government

The Legislature charges the Washington Beer Commission (Commission), with oversight by the Director of the Department of Agriculture (Department), to speak on behalf of the

Washington government with regard to the marketing and promotion of Washington-produced beer.

Establishing the Beer Commission

Creation of the Commission requires that a referendum be conducted by the Department and approved by a specified number of affected producers. A "producer" is any person or other entity licensed under Title 66 RCW to produce beer within the state and who produces less than 100,000 barrels of beer annually per location. An "affected producer" is any producer subject to this chapter. The referendum procedure is initiated when the Director of the Department is petitioned to implement the chapter and determine producer participation and the assessment. Procedural requirements for the petition and for the referendum are specified in section 5 of the bill. If the Director determines that the referendum has been approved, he or she will appoint Commission members within 60 days and will direct the Commission to initiate the producers' assessment. If the Director determines that the referendum has not been approved, he or she will take no further action to implement or enforce the chapter.

Commission Members

The Commission will have seven voting members, including six producers and the Director of the Department. The Director will appoint the producer members of the Commission, taking into consideration recommendations made by a statewide craft brewing association or other affected producers. The Director will seek balanced representation on the Commission on the basis of beer produced and geographic location. Qualifications for Commission membership, procedures relating to transacting Commission business, terms, appointments, and reimbursement of expenses are described in sections 4 and 6 of the bill.

Commissioner Responsibilities

The Commission shall:

- elect a chair and officers;
- do everything necessary to effect the purposes of the chapter;
- hire and discharge employees and engage services of contractors;
- retain legal counsel;
- receive donations of beer for promotional purposes;
- directly or indirectly promote Washington beer, including lawful acquisition and dissemination of beer, with or without charge. This dissemination is not deemed a sale;
- promote beer through special events such as beer festivals and unique tastings;
- participate in international, federal, state, local hearings, meetings and other proceedings related to the production, regulation, distribution, sale or use of beer;
- acquire and transfer personal and real property, establish offices, and enter into contracts;
- maintain accounts with qualified public depositories and spend money for authorized purposes;
- keep records in accordance with generally accepted accounting principles, available for audit by the state auditor;
- reimburse the Department for all costs incurred to carry out this chapter;

- create and maintain producer lists and solicit producer opinions;
- develop a reporting system to document that affected producers are reporting beer production quantities and are paying the assessment;
- employ, enter into contracts, or act in concert, with any person or entity to promote the general welfare of the industry and to assist in Washington beer sales and distribution in domestic and foreign commerce;
- sue and be sued as a commission; and
- serve as liaison with the Liquor Control Board on behalf of itself.

The Commission must submit to the Director for approval any plans, programs, and projects concerning advertising, promotion and education, market research and development. The Director must review the advertising or promotion program to ensure that no false claims are made. The Commission must also submit for the Director's approval its proposed research plan, its commodity-related education and training plan, and budget.

Research, Promotional, Educational Program

The Commission may create and conduct a comprehensive and extensive research, promotional and education campaign. The campaign must take into account the needs of producers, market conditions, and public awareness. Research goals may include efforts to:

- establish Washington beer as a major market factor everywhere;
- promote breweries as tourist attractions;
- encourage favorable press reporting worldwide;
- establish Washington beer as a major premium source;
- encourage favorable legislative and regulatory treatment of Washington beer in all markets;
- encourage promotion of Washington agricultural commodities related to beer, specifically hops, malting barley and wheat; and
- foster economic conditions favorable to investment in beer production.

Donations and Promotional Hosting

The Commission may purchase or receive donations of beer or malt beverages from any brewery worldwide and use them for promotional purposes. Beer and malt beverages furnished and used in-state are subject to beer and wine taxes. No liquor license, permit or bond is required of the Commission for authorized promotional activities. Commission expenditures for agricultural development, trade promotion and promotional hosting must be approved by the Commission as specific line items at its annual public budget hearings.

Obligations of the Commission

Obligations incurred by the Commission and other liabilities or claims against the Commission will be enforced only against the assets of the Commission. No liability for the debts or actions of the Commission will exist against the state, its subdivisions and instrumentalities, or individual members, employees or agents of the Commission or the state.

Assessments

An annual assessment of 10 cents per barrel of beer produced, up to 10,000 barrels per location, is levied upon beer produced by an affected producer. The assessment is a personal debt of each producer assessed. The consequences for lack of payment are described in section 16 of the bill. The Commission must adopt rules for payment and collection of the assessment. The assessment of an individual affected producer may be reduced based upon in-kind contributions to the Commission. Moneys collected will be deposited into a separate account in a state depository. Expenditures from the account may be made without specific legislative appropriation.

Disclosure

Certain agricultural business records, Commission records, and Department records relating to the Commission and producers are exempt from public disclosure. These are further identified in sections 25 and 26 of the bill. Some records may be shared between the Department and the Commission, or used in a suit or administrative hearing involving this chapter.

Substitute Bill Compared to Original Bill:

The emergency clause is removed.

Appropriation: None.

Fiscal Note: Requested on January 24, 2006.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except section 26 which reinstates prior law related to public disclosure exemptions for agriculture and livestock after a scheduled expiration and takes effect July 1, 2006.

Testimony For: Beer production is a growing industry in Washington, and an agricultural economic development tool that can bring jobs and revenues to rural areas. At one time, there were only a few large breweries on the west side. Now there are 82 craft brew pubs covering many regions of the state. Beer production uses in-state commodities including hops, wheat, and premium barley, which brings higher prices to growers. Breweries, festivals and tastings are tourist attractions. The Washington Wine Commission model is being used for the Beer Commission. When the Wine Commission began, there were only 22 wineries in the area. Now there are over 400. The Beer Commission assessment on producers will be small, so the majority of its funding will be raised through "sweat equity" from specialized tastings, festivals and fundraisers. Ten years ago, similar legislation was proposed, but at that time, the industry was fragmented about forming a commission. All 82 microbreweries are in favor of the Commission now, and since it is self-sustaining, there should be no fiscal impact on the state.

Testimony Against: None.

Persons Testifying: T.K. Bentler, Arlen Harris, Janelle Pritchard, and Dick Cantwell, Washington Brewers Guild.

Persons Signed In To Testify But Not Testifying: None.